

1 purchase agreements in those two hearings, we  
2 need a record for appeal. And because the  
3 court didn't have the record based on the past  
4 court reporter's inability to perform, the  
5 court is going to redo those hearings. But  
6 Mr. Keller stated that the court will rule the  
7 same way. I don't think that's in the court's  
8 order on the redo hearing.

9 And there are two other hearings.  
10 One is that Mr. Keller I believe indicated in  
11 mid-October where the court is having a  
12 several-day trial with regard to the SkyTel  
13 proof of claim in the bankruptcy based on our  
14 antitrust action against Maritime in the U.S.  
15 District Court in New Jersey. And we will be  
16 putting on evidence as to liability and  
17 damages for the bankruptcy court to be able to  
18 estimate the value of that antitrust claim for  
19 the purpose of voting on the Chapter 11 plan.  
20 So until that is done, the court won't have  
21 determined what the SkyTel votes will be that  
22 will affect the voting on the Chapter 11 plan.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 That's mid-October.

2 Mr. Keller also noted that the --  
3 ultimately the court will decide upon the  
4 Chapter 11 plan. That of course is -- there  
5 are various parties who have taken issue with  
6 the Chapter 11 plan and that could be a  
7 disputed matter when it comes time to vote on  
8 the Chapter 11 plan and whether or not in  
9 November the court approves this or that  
10 Chapter 11 plan has yet to be determined. I  
11 don't think Maritime can properly state that  
12 sometime in November the court will approve  
13 one or the other Chapter 11 plans.

14 JUDGE SIPPEL: Well, okay. That's  
15 your position. What is this? What is the --  
16 in mid-October the bankruptcy court is going  
17 to -- what are they going to hear about the  
18 antitrust claim in New Jersey? Just the  
19 nature of the claim, whether or not it gives  
20 the bankruptcy court any concern? But they're  
21 not going to retry the antitrust issue, I'm  
22 sure. Right?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   MR. HAVENS:   Well, Your Honor,  
2                   SkyTel entities have a party status in the  
3                   bankruptcy case of Maritime because they have  
4                   claims against Maritime.   And some of the  
5                   claims are the SkyTel claims in the New Jersey  
6                   U.S. District Court against Maritime and other  
7                   parties for violation of the Sherman Act 1.  
8                   And when Maritime filed the bankruptcy it  
9                   created an automatic stay that stayed the  
10                  SkyTel action in New Jersey.   SkyTel got from  
11                  the bankruptcy court a determination to lift  
12                  the automatic stay so that our case in New  
13                  Jersey could go forward against Maritime.

14                  And the discovery in the New  
15                  Jersey action against Maritime is relevant not  
16                  only to that New Jersey action, but to this  
17                  hearing before Your Honor.   And we're trying  
18                  to get Maritime to respond to discovery in  
19                  that case because it's relevant to that case.  
20                  And then whatever of that discovery is  
21                  relevant to this hearing, we will pass that  
22                  onto the Enforcement Bureau.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 JUDGE SIPPEL: Well, wait a  
2 minute. Wait just a second now. My question  
3 is you said there's going to be a hearing in  
4 mid-October before the bankruptcy court?

5 MR. HAVENS: Yes, sir.

6 JUDGE SIPPEL: On the --

7 MR. HAVENS: The purpose of that  
8 hearing is solely for the bankruptcy court to  
9 determine the value, the estimated value of  
10 discovery on the Sherman Act 1 claim against  
11 Maritime for the sole purpose of determining  
12 the votes of SkyTel on the Chapter 11 plan.

13 JUDGE SIPPEL: Okay. That's good  
14 enough. Let me ask, Mr. Keller, you know  
15 anything about that?

16 MR. KELLER: Let me just state it  
17 this way, and I know what he was talking  
18 about, and here's my understanding of it,  
19 which I think probably gets closer to what  
20 you're asking. Mr. Havens has an antitrust  
21 action in New Jersey. Potentially as a result  
22 of that New Jersey antitrust action SkyTel

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       could receive a damages award.

2               The purpose of this bankruptcy  
3       hearing is to determine (A) what is the likely  
4       amount of that award, you know, estimated to  
5       be; and (B) what status would it have in terms  
6       of being any claim on the estate. And  
7       therefore, how should it be calculated for  
8       purposes of voting on the plan? They're not  
9       going to decide the merits of the New Jersey  
10      action, but they're going to say if there is  
11      an award in this action, how does that relate  
12      to the claims and what status would it give  
13      SkyTel in terms of voting on the plan?

14             JUDGE SIPPEL:       That's pretty  
15      hypothetical. I mean, he has to get the award  
16      first in the --

17             MR. KELLER:   Yes.

18             JUDGE SIPPEL:   Is that triple  
19      damages?

20             MR. KELLER:   I don't know. I  
21      mean, I'm not --

22             JUDGE SIPPEL:   Treble damages.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. KELLER: Treble probably. I'm  
2 not aware of it. But it is, it's a  
3 theoretical thing. But nevertheless, they  
4 need to know so they can vote on the plan,  
5 otherwise we'd have to sit around and wait  
6 until, you know, after the antitrust case.

7 JUDGE SIPPEL: All right. That's  
8 all that I need right now on it. Is there  
9 anything else, Mr. Havens? Are you finished  
10 then?

11 MR. HAVENS: On that bankruptcy  
12 issues, yes, I'm done. I had some other items  
13 if you'd like to permit.

14 MR. MILLER: Excuse me, just one  
15 real quick question. This is Mr. Miller on  
16 the bankruptcy.

17 JUDGE SIPPEL: Go ahead.

18 MR. MILLER: Mr. Keller, did you  
19 say there was a recent amendment to the  
20 disclosure statement, or was it the one that  
21 was that filed several weeks ago?

22 MR. KELLER: Yes, I think there --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 my understanding -- actually you were with me  
2 in the meeting. Did we say the 30th? You  
3 don't know? I don't know. I think the 30th.  
4 I think one was filed on the 30th. But  
5 certainly something was --

6 MR. MILLER: 30th of what?

7 JUDGE SIPPEL: 30th of July.

8 MR. KELLER: Of July.

9 MR. MILLER: Oh, so there was one  
10 done within the last couple of days?

11 MR. KELLER: Yes, that's my  
12 understanding.

13 MR. MILLER: Okay.

14 MR. KELLER: I haven't got it yet,  
15 but, yes, that's my understanding.

16 MR. MILLER: Okay. Thank you.

17 JUDGE SIPPEL: So when he gets it,  
18 he's going to distribute it to all the parties  
19 in this case, plus me.

20 MR. MILLER: Okay.

21 JUDGE SIPPEL: That's it.

22 Anything else on bankruptcy?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. MILLER: No, thank you, Your  
2 Honor.

3 JUDGE SIPPEL: Okay. Mr. Havens,  
4 you said you had something else? I say that  
5 with great care. What do you have that's in  
6 addition to what we talked about?

7 MR. HAVENS: Okay. Thank you.  
8 Several items. There's a lot of discussion of  
9 course on issue G and these charts with  
10 summary statements. You know, I have one  
11 proposal or suggestion that a chart be  
12 prepared by Maritime with the contact  
13 information for the site owners and managers  
14 of all of the sites. That would allow  
15 Enforcement Bureau and SkyTel and any other  
16 parties to contact those persons and get  
17 relevant information. It's a very simple  
18 thing to put together. Maritime must have  
19 that information. And I think that would help  
20 move forward issue G.

21 JUDGE SIPPEL: All right. Let me  
22 ask the Bureau. What does the Bureau think

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 about that information? Of use?

2 MS. KANE: I'm sure it would be of  
3 use, Your Honor, but that should not be in  
4 lieu of Maritime providing the information  
5 that we've asked for on the charts.

6 JUDGE SIPPEL: No, no. No, it's  
7 not lieu of anything.

8 MS. KANE: As an addition to what  
9 we've already asked for, I'm sure it would be  
10 very helpful, although we would hope that we  
11 wouldn't have to subpoena all of those third  
12 parties for the information that Maritime  
13 should otherwise have had.

14 JUDGE SIPPEL: Okay. All right.  
15 I think you've answered my question.

16 Mr. Keller, can you provide that  
17 information?

18 MR. KELLER: I can check and see,  
19 yes.

20 JUDGE SIPPEL: To the extent that  
21 you can, include it in your --

22 MR. KELLER: Certainly.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Certainly.

2 JUDGE SIPPEL: -- redo, please.

3 MR. KELLER: Certainly.

4 JUDGE SIPPEL: Anything else, Mr.  
5 Havens?

6 MR. HAVENS: Yes, Mr. Keller made  
7 mention today of a footprint with regard to  
8 the site-based licenses.

9 JUDGE SIPPEL: No, I think that  
10 was Mr. Plache on behalf of Pinnacle.

11 MR. HAVENS: Okay. Well, then I  
12 misunderstood who was speaking. But in any  
13 case, there was a discussion of a so-called  
14 footprint of site-based licenses and within  
15 the footprint there could be fill-in stations.  
16 To the degree Pinnacle, who my understanding  
17 is they are in support of Maritime. They  
18 intervened in this case to support Maritime.  
19 Pinnacle wants to maintain its lease with  
20 Maritime and continue with those site-based  
21 licenses under lease.

22 And I believe; and Pinnacle

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 counsel can clarify, that Pinnacle -- I may be  
2 wrong on this, but it's a question whether  
3 Pinnacle has a lease not only of the site-  
4 based licenses, but of any portion of  
5 Maritime's Mid-Atlantic geographic license.

6 JUDGE SIPPEL: Mr. Plache, can you  
7 answer that question?

8 MR. PLACHE: Pinnacle does have  
9 such a lease.

10 JUDGE SIPPEL: Pinnacle does have  
11 such a lease.

12 MR. HAVENS: Okay. Well, then I  
13 think that's the clarification as to what  
14 counsel for Pinnacle discussed today, that if  
15 it is building and running its New Jersey  
16 system not only on the site-based licenses  
17 which are under issue G, but the geographic  
18 license. Then that's a critical difference.  
19 The Mid-Atlantic license cuts New Jersey into  
20 half. The northern edge of that is the middle  
21 of New Jersey. And if Pinnacle is serving the  
22 State of New Jersey, then essentially the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 lower half of its network, lower half of the  
2 state is not simply subject to issue G.

3 But with regard to this idea of a  
4 footprint, that has been -- that is the  
5 subject of proceedings before the Wireless  
6 Bureau for at least five years and subject of  
7 two Bureau orders with regard to that the  
8 site-based licenses authorized footprint is  
9 under an FCC rule 80.385(b). And in order to  
10 get protection under that rule and determine  
11 the protected footprint, Maritime has to  
12 testify the site details because you have to  
13 do an engineering calculation of its service  
14 contour, which is the footprint.

15 Now SkyTel has asked Maritime in  
16 writing for probably four years for those  
17 details and Maritime has refused in writing to  
18 provide those. And that's the issue pending  
19 before the Wireless Bureau. And, you know,  
20 we're seeking that the Bureau draw negative  
21 inferences on that.

22 JUDGE SIPPEL: Let me interrupt a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 minute. You said there are two Bureau rulings  
2 on the question of footprint?

3 MR. HAVENS: Yes, there are two  
4 Bureau rulings.

5 JUDGE SIPPEL: Can you give me  
6 copies of those?

7 MR. HAVENS: Yes, I did that  
8 before, Your Honor. I'll send them again.

9 JUDGE SIPPEL: Well, send them  
10 again, yes.

11 MR. HAVENS: Okay. Yes, they were  
12 in response to a Maritime request for  
13 declaratory ruling as to what is the maximum  
14 protected footprint or service area for its  
15 site-based licenses. And the Commission did  
16 not agree with Maritime that it can protect  
17 those up to the maximum parameters on its  
18 licenses on ULS as it could have built the  
19 maximum. What the Bureau said is you're only  
20 protected at what you actually build and you  
21 must give the details of what you actually  
22 build to the geographic co-channel licensee,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1       which are the SkyTel entities. And despite  
2       those two orders; one was the initial letter  
3       decision and the other was an order on recon,  
4       Maritime has consistently refused in writing  
5       to provide any of those details.

6               JUDGE SIPPEL: All right. Well,  
7       let's take it one step at time. Just get me  
8       those orders again. I'm sorry if this is the  
9       second time.

10              Anybody else interested in those  
11       orders?

12              MS. KANE: We'll take a copy, Your  
13       Honor.

14              JUDGE SIPPEL: Mr. Plache's?  
15       Pardon me?

16              MS. KANE: We'll take a copy.

17              JUDGE SIPPEL: Bureau will take  
18       copies also.

19              I think -- okay. That -- do you  
20       want to -- oh, but you do want to comment  
21       though, Mr. Plache, to what he said?

22              MR. PLACHE: Well, I wasn't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 expecting Mr. Havens to be presenting legal  
2 arguments today --

3 JUDGE SIPPEL: Well, I don't know  
4 what he's presenting.

5 MR. PLACHE: -- on this issue.

6 JUDGE SIPPEL: I have no idea what  
7 he's presenting. I consider it to be fact  
8 information, but you can do what you want.  
9 You're not going to be prejudiced by it either  
10 way you go.

11 MR. PLACHE: I don't have any  
12 comment today on what Mr. Havens is saying.

13 JUDGE SIPPEL: Okay.

14 MR. PLACHE: If he wants to have  
15 his attorney file a brief on these issues, we  
16 would certainly consider it.

17 JUDGE SIPPEL: Well, I'm still  
18 trying to figure out who Mr. Havens' attorney  
19 is on all the different entities. I know Mr.  
20 Jackson is representing --

21 MR. PLACHE: And just to be clear,  
22 where Pinnacle is operating from is covered in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 detail in their discovery responses which are  
2 subject to the protective order and have not  
3 been -- and Mr. Havens was not given a copy of  
4 that by Pinnacle. Although Mr. Havens'  
5 attorney who we believe is accompanying him --

6 JUDGE SIPPEL: Mr. Jackson?

7 MR. PLACHE: -- Mr. Jackson was  
8 given them. I mean, you know, we served Mr.  
9 Jackson. We couldn't serve the other SkyTel  
10 entities. They're not represented by counsel.

11 JUDGE SIPPEL: Well, you did the  
12 right thing.

13 MR. PLACHE: Thank you.

14 JUDGE SIPPEL: Okay. I'll be  
15 aware of that. Do I have a copy of that  
16 discovery response someplace? I must.

17 MR. PLACHE: You do, absolutely.

18 JUDGE SIPPEL: Okay. Sorry to ask  
19 that question, but okay.

20 MR. PLACHE: And I believe you  
21 should have an electronic copy as well as a  
22 paper copy.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 JUDGE SIPPEL: Okay. Yes, because  
2 after Friday I've got nobody to blame.

3 All right. Anything else on the  
4 speakerphone?

5 MR. HAVENS: Yes, sir.

6 JUDGE SIPPEL: Mr. Havens again?

7 MR. HAVENS: Yes. I would like  
8 the opportunity to raise an issue with regard  
9 to an FCC rule, 80.471. It is a rule under  
10 Part 80 with regard to public coast stations'  
11 filings of applications for permission to  
12 discontinue. Now that rule is on the books.  
13 It applies to public coast. NTS is public  
14 coast. There was forbearance granted years  
15 ago of that rule because public coast stations  
16 are deemed to be CMRS and the Commission has  
17 issued forbearance with regard to CMRS  
18 entities having to submit applications to  
19 discontinued service.

20 However, Maritime has stated to  
21 the FCC in its request for a \$1.3 million  
22 refund of universal service fees paid by its

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 predecessor entity Watercom that Maritime  
2 discontinued interconnection many years ago,  
3 and on that basis it sought a refund of the  
4 universal service fees paid as CMRS entities.

5 Now, you know, it's -- if Maritime  
6 has stated and it's -- clearly that these  
7 stations are not interconnected; now I believe  
8 it reaffirmed that in responses to the  
9 Enforcement Bureau's discovery, then these  
10 stations by FCC definition under 20.3 are not  
11 CMRS stations. And if they're not CMRS  
12 stations, then they are not entitled to  
13 forbearance and therefore Maritime has to have  
14 files under 80.471, application to  
15 discontinue, because it has discontinued  
16 operations at a large portion of these  
17 stations. So I'm raising that as an important  
18 issue with regard to issue G.

19 JUDGE SIPPEL: Anybody have a  
20 comment on that?

21 MR. KELLER: I think we've gone --  
22 even assuming we hadn't been there before,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 we've certainly going beyond collecting  
2 factual information. We're into legal  
3 arguments and inferences and results to be  
4 drawn from legal arguments.

5 JUDGE SIPPEL: Oh, I'm not sure  
6 what it is. If you've got something to  
7 comment on -- if you're going to present a  
8 legal argument, present it through counsel,  
9 please.

10 MR. HAVENS: Well, Your Honor, I  
11 think the only question is on a fact basis;  
12 and perhaps I --

13 JUDGE SIPPEL: All right.

14 MR. HAVENS: -- erred here in not  
15 presenting it more as a fact -- that I believe  
16 it's relevant. I think the fact of whether or  
17 not Maritime alleges to have submitted to the  
18 Bureau directly or indirectly in some way  
19 applications to discontinue -- whether it has  
20 or has not. Now if it has, then, you know,  
21 the legal issue surrounding 80.471 is one  
22 thing. If it has not, if it says it has never

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)